defendant receives sub-rents in excess of seventy-five *per centum* of the rent paid by him.

The first defendant is therefore liable to be ejected but taking into consideration the expense of repairs incurred by him and to give some opportunity to find other accommodation, I think he should be allowed to remain till the end of September next.

As the tenancy did not prohibit assigning or sub-letting, the sub-tenants are protected by section 15 and cannot be ejected at this stage but will become direct tenants of the plaintiff.

I fully realise that the rooms separately sublet cannot in fact be occupied without joint use of the kitchen which is always unsatisfactory and is not even workable except among congenial people. Recovery of the first defendant's rooms only may therefore be of little practical benefit to the plaintiff. It is, however, the result of applying the law to the facts as found and in my view it is consistent with the spirit of the statute. The basic fact is that there are not enough houses. It may be hard for the plaintiff that he cannot obtain possession of the house which he has bought but it would also be hard to throw out three families in order to put in one. Possibly some compromise may be arranged.

I must point out, however, to the defendants and others concerned that though the original tenancy was assignable, the present one may not be. Unless they can agree, the parties should consult their solicitors on this point before taking any other step.

The first defendant must yield possession of No. 101 Jervois Road on or before the 30th September, 1949 with vacant possession of the portions now occupied by him.

The order will not be enforceable against the second defendant, who is a sub-tenant of the first defendant.

On the taking effect of this order the second defendant, if he remains in possession, and also Ong Kim Seng and Koh Huan Choo, will become tenants of the plaintiff of the portions now occupied by them, with the same licences and at the same sub-rents, subject to any Order of the Rent Conciliation Board.

There will be no declaration as to whether or to what extent, if any, the tenants or sub-tenants are prohibited from further assigning or sublettling their respective interests.

All parties to the suit and the present sub-tenants will be at liberty to apply in respect of any change in the sub-tenancies which may have taken place since the date of service of the writ.

The first defendant must pay the plaintiff's taxed costs. The second defendant must pay his own separate costs, if any.

Order accordingly.

CHAIM FLANCHAUM v. KOH PENG KOON.

[Orig. Civ. Juris. (Gordon-Smith, J.) May 28, 1949]

[Singapore — Suit No. 58 of 1948]

Negligence — Negligent driving — Damages in respect of injuries arising out of road accident.

In this suit the Plaintiff sued the Defendant for $2,000/- special and $18,000/- general damages in respect of injuries caused to him arising out of a road accident which occurred on the 19th June 1947 when crossing the road at the junction of Robinson Road and Cecil Street, Singapore. Para. 3 of the Statement of Claim alleged that such injuries were caused by a motor vehicle, a jeep belonging to the Defendant or his agent or servant then in charge and control of the said motor vehicle.

Held, (1) if it is established from his own evidence or by evidence produced on behalf of the Defendant that the Plaintiff could have avoided the collision by the exercise of reasonable care, then the Plaintiff fails because his injury is due to his own negligence in failing to take reasonable care; (2) if it is established that although the Plaintiff was negligent, the Defendant could have avoided the collision by the exercise of reasonable care, then it is the Defendant's failure to take that reasonable care to which the resulting damage is due and the Plaintiff is entitled to recover; (3) mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence; the Plaintiff has no right to complain if in the agony of the collision the Defendant fails to take some step which might have prevented a collision, unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances. Claim was dismissed.

Case referred to:—

(1) *Swadling v. Cooper* (1931) A.C. 1.

CIVIL SUIT for damages.

A. N. Mitra for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Gordon-Smith, J. : — In this suit the Plaintiff by Writ of Summons dated 6th February 1948, sues the Defendant for $2,000 Special and $18,000 general damages in respect of injuries caused to him arising out of a road accident which occurred on the 19th June 1947 when crossing the road at the junction of Robinson Road and Cecil Street, Singapore.

Para. 3 of the Statement of Claim alleges that such injuries were caused by a Motor Vehicle, a Jeep S. 7246 belonging to the defendant in consequence of its

negligent driving by the Defendant or his agent or servant then in charge and control of the said motor vehicle.

Para. 4 of the Statement of Claim gives details of the alleged negligence and paras. 5 and 6 give details of the damages claimed.

The Defence filed, apart from admitting the ownership of S. 7246 denies in toto the averments in the Statement of Claim. The defence also alleges negligence on the part of the defendant himself or in the alternative, contributory negligence by him. In particular the Defence denies that plaintiff was knocked down by the motor vehicle as alleged or that such motor vehicle was being driven by the Defendant or his agent or servant at the time alleged. Subsequently on notice to admit facts, the following further facts were admitted :—

(1) That one Yeo Ah Hock was driving the said motor vehicle in question on the afternoon of the 19th June;

(2) That the Plaintiff came into collision with the said motor vehicle but not that the plaintiff was knocked down;

(3) That Yeo Ah Hock was living at that time at 41 Upper Pickering Street, Singapore;

(4) That certain correspondence as detailed took place and which are not materially relevant to the issues before me.

It is abundantly clear therefore that on the pleadings the burden of proof is on the plaintiff and in order to succeed he must establish that the defendant, or his servant or agent, was negligent and that that negligence caused the collision of which he complains.

If it is established from his own evidence or by evidence produced on behalf of the defendant that the plaintiff could have avoided the collision by the exercise of reasonable care, then the plaintiff fails because his injury is due to his own negligence in failing to take reasonable care.

If it is established that although the plaintiff was negligent, the defendant could have avoided the collision by the exercise of reasonable care, then it is the defendant's failure to take that reasonable care to which the resulting damage is due and the plaintiff is entitled to recover.

Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence; the plaintiff has no right to complain if in the agony of the collision the Defendant fails to take some step which might have prevented a collision, unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances. The above statements of the law on the subject are taken from the Judgment of Viscount Hailsham in the House of Lords in the case of *Swadling v. Cooper*[1].

The only evidence brought before me was given by the plaintiff and defendant respectively and the latter knew nothing of the accident at the time and was not driving the car. To establish liability by him therefore the plaintiff had to establish that Yeo Ah Hock was the driver, was the servant or agent of the defendant and that at the time, the motor vehicle was under the control of the defendant.

The evidence showed that the defendant, at the time in question, carried on business at 41 Upper Pickering Street but did not reside there. In the same premises the firm of Hoon Huat & Co. also carried on business and Yeo Ah Hock was employed by them. The defendant knew Yeo Ah Hock quite well, and the latter had on one or two occasions previously with the permission of the defendant borrowed the motor vehicle.

At the time in question the defendant was out but the motor vehicle was parked outside 41 Upper Pickering Street and Hoon Huat & Co. wanted their employee Yeo Ah Hock to fetch a tyre from Tanjong Pagar — so Yeo Ah Hock borrowed the defendant's motor vehicle to fetch the tyre. The defendant on return ascertained from Hoon Huat & Co. that Yeo Ah Hock had taken his motor vehicle and why and on Yeo Ah Hock's return he told the defendant about the accident.

It is abundantly clear that Yeo Ah Hock was not the servant or agent of the defendant and that his borrowing the motor vehicle was unauthorised by the defendant as, at the time, Defendant knew nothing about it. This really disposes of the claim as against the defendant but even if it was otherwise the burden of proving negligence on the part of Yeo Ah Hock, the driver, is still on the plaintiff as also is the burden of negativing negligence on his part or failure to take reasonable care.

As I have said, the only witness as to the circumstances of the accident was the plaintiff and he alleges that he was knocked unconscious from which he did not recover until he found himself in a lorry being taken to Alexandra Hospital for first aid. He stated that he did not even remember falling down. It was extremely difficult to get a coherent story of the accident from the plaintiff although he appeared to understand and speak English quite well but was excessively voluble.

He was crossing the road at an extremely busy and dangerous junction of 4 cross roads. There was no policeman on point duty, nor traffic lights but he stated that "I considered that as a pedestrian crossing the road and seeing this Jeep coming I had the right to continue crossing the road and that the Jeep should have pulled up." Again he stated "Surely at a junction he has to stop" and again after careful explanation in order that he should appreciate the point that if neither stopped, the accident was bound to happen — he replied, "It was time to cross."

In the absence of other evidence one was driven to the conclusion that there was a complete absence of want of care on the part of the plaintiff in attempting to cross the road as he did. However much one may sympathise with him in whatever injuries he did receive, (and there was no conclusive evidence in this respect that they were as serious as he alleges) it does seem surprising that, if they were as serious as he made out, he should be discharged from the General Hospital the same afternoon, after having one stitch put in a cut above the eyebrows. It is true that he returned the next day and was an inmate for a few days for investigation.

For the reasons given earlier, the plaintiff on the evidence before me was bound to fail in his claim against the defendant and the Suit is dismissed with costs.

Suit dismissed.

HENDRY v. DE CRUZ.

[App. Civil Juris. (Willan, C.J., Russell and Briggs, JJ.)]
December 2, 1948.
[K.L. — Civ. App. No. 44 of 1948]

Courts Enactment, F.M.S., ss. 16(ii) 18, 19, 20 — 1935 Rule No. 1 sub-rule 5 — Failure to deposit security for appeal within the time limited — Whether Court of Appeal is bound by its own decisions. Special leave to extend time in which to appeal.

In this case the appellant sought to appeal against a judgment of the High Court dismissing his claim for possession of certain premises. The judgment was given on the 24th of August 1948. On the 14th September 1948, that is within the period of one month specified in section 18(i) of the Courts Enactment, the notice of appeal was filed in the Supreme Court Registry, but by inadvertence no deposit was made as required by section 20 of the Enactment. It was not till the 11th of October 1948, that is after the said period of one month had expired, that this deposit was tendered to the Registrar. The Registrar refused to accept it, as it was tendered out of time. The applicant thereupon applied for an order that he be given leave to enter the appeal and lodge the security for costs of the appeal despite the fact that the time within which this should have been done had expired. It was argued for the appellant, that the Court should not follow the decision in **Butler-Madden v. Krishnasamy**(1), where it was held that special leave was required to extend the time under section 20 and that the Court in considering whether a ground put forward constituted special leave should follow the definition of "special leave" in the English cases.

Held, that the Court of Appeal was bound by its previous decision in **Butler-Madden v. Krishnasamy**(1) and was therefore bound to hold that the mistake of the clerk of the legal adviser for the appellant did not constitute grounds for granting special leave to extend the time in which to appeal.

Cases referred to :—

(1) *Butler-Madden v. Krishnasamy & others* Malayan Union Civil Appeal No. 15 of 1947 (Unreported).

(2) *Coles v. Ravenshear* (1907) 1 K.B. 1.

(3) *In re Helsby* (1894) 1 Q.B. 742.

(4) *Sockalingam Mudaliar v. Ramasamy Chettiar* (1938) F.M.S.L.R. 77.

(5) *Pillay and another v. The Official Assignee,* Perak Civil Appeal No. 7 of 1947 (Unreported).

(6) *Ng Yew v. Perumal Mudaly* 5 F.M.S.L.R. 21.

(7) *The Official Receiver and Liquidator v. Joseph Grigg and the Chartered Bank of India, Australia and China* 7 F.M.S.L.R. 48.

(8) *Federated Engineering Co. v. Salak South Limited* 2 F.M.S.L.R. 63.

(9) *Velazquez Limited v. Commissioners of Inland Revenue* (1914) 2 K.B. 404.

(10) *Young v. Bristol Aeroplane Company Ltd.* (1944) 1 K.B. 718.

(11) *Young v. Bristol Aeroplane Company Ltd.* (1946) A.C. 163.

(12) *In re Dallremeyer* (1909) 1 K.B. 105.

CIVIL APPLICATION before Court of Appeal for leave to extend time in which to appeal.

R. Ramani (*T. K. Sen* with him) for the applicant.

F. G. Charlesworth for the respondent.

The facts and arguments appear sufficiently from the judgment of Willan, C.J.

Cur. Adv. Vult.

Willan, C.J. : — The applicant seeks to appeal against a judgment of the High Court dismissing his claim for possession of certain premises. That judgment was given on the 24th August, 1948, and on or about the 13th of September, 1948, the applicant instructed his Advocate and Solicitor to lodge an appeal against that judgment.